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In the Supreme Court of the United States

OCTOBER TERM, 1906.

No. 314.

CLARENCE P. HUNT, *Appellant*,

vs.

THE NEW YORK COTTON EXCHANGE, *Appellee*.

Appeal from the Circuit Court of the United States for the Western District of Tennessee.

Argument for Appellant.

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STATEMENT OF THE CASE.

This injunction bill was filed on the 25th of January, 1906, by the New York Cotton Exchange, a private corporation under the laws of the State of New York, with four hundred and fifty members, owning an exchange building for the exclusive use of its members, and therein conducting, on every business day, cotton sales for present and future delivery, the transactions aggregating many millions of dollars annually, and being exclusively confined to the members of the exchange and gathering during market hours, market prices of such cotton, on the floor of the Exchange, which the appellee sold to telegraph companies to enable those companies to instantaneously receive the market quotations, and to distribute them to their customers throughout the United States, to enjoin appel-

lant from using and receiving market reports. The bill sets forth the manner of collecting and distributing these quotations, the method by which they were gathered and distributed prior to the 14th of July, 1903; the contract between the appellee, the Gold & Stock Telegraph Company under which the Western Union Telegraph Company acquired the right to sell the market quotations to its customers, the price it agreed to pay therefor monthly, the form of application required to be made to the Telegraph Company, for continuous cotton quotations, and thereupon the bill of complaint proceeds as follows:

> VIII. And your orator is informed and believes, and charges the fact to be, that every person now, or since shortly after making of said contracts, receiving said quotations, from either of said companies, had executed and delivered an application subsequently in the form above set out, and such application has, before the delivery of any quotations thereunder, been approved and accepted by your orator, except in a few instances, where persons who were receiving said quotations from the Western Union Telegraph Company prior to the execution of said contracts, have, since the execution of said contracts, secured temporary injunctions in suits brought against said Western Union Telegraph Company (your orator not being made a party to such suits) to enjoin said telegraph company from withholding or withdrawing said quotations from such persons, upon the ground that such persons were not obliged to sign such application for the quotations, nor secure your orator's approval thereof, but were entitled to the quotations without either such application or approval.
>
> IX. That said defendant, Clarence P. Hunt, has never delivered to either of said telegraph companies or your orator any application in the form above described, nor has your orator consented that said defendant should receive its quotations, but that on, to-wit, July 14, 1903, the said Clarence P. Hunt was receiving from said Western Union Telegraph Company said continuous quotations of your orator, and that your orator avers on information and belief, that thereafter said Western Union

Telegraph Company notified said Hunt of the making of said contract between your orator and said telegraph company, and that thereunder said telegraph company would be required to, and would cease furnishing to said Hunt said quotations and such application should have been approved by your orator, as in said contract provided; and that thereupon said Hunt declined and refused to make such application, but in lieu thereof, and on, to-wit, July 31, 1903, said Hunt, with others, filed in the Chancery Court of Shelby County, Tennessee, a petition against said Western Union Telegraph Company, to enjoin it from withdrawing or ceasing to furnish to said petitioner your orator's said quotations; and that thereupon an *ex parte* injunction was issued against said telegraph company as in said petition prayed; that thereafter said company filed its answer to said petition, setting up the said contract with your orator, and denying the right of said petitioner to the relief in said petition prayed, and thereupon, said cause came on for final hearing upon bill and answer, and on —— 190—, a judgment was entered for defendant; whereupon said Hunt and others perfected an appeal from said judgment to the Supreme Court of Tennessee, which on, to-wit, the 15th of June, 1905, reversed said decree without deciding the merits, and for the reason that said Chancery Court should not have disposed of said cause upon bill and answer, but should have awaited the taking of evidence therein, and that said cause is now pending and undisposed of in said Chancery Court, and said injunction is still in force; and that by reason of said injunction, and not otherwise, said Western Union Telegraph Company has been and now is furnishing to said Clarence P. Hunt, and said Hunt has been and now is receiving the continuous quotations of your orator.

X. That such unauthorized receipt and use of said quotations by said defendant is calculated to and in time will, if not entirely stopped, seriously impair the value to your orator of its quotations, and that, if even one person within the jurisdiction of this court be allowed to secure such quotations without the restrictions as to the use thereof which your orator imposes as aforesaid, such person can furnish them to all the bucket-shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their

use in bucket-shops as a basis of their illegal bets, and materially impair the right of your orator to derive a revenue from the distribution of said quotations.

XI. That your orator is advised by its counsel that there exists no remedy at law adequate to protect Orator's right of property in said quotations against said efforts of said defendant to destroy the same, as actions at law for damages against each person getting said quotations would be impracticable because giving rise to a multiplicity of suits and because the ascertainment of the exact or approximate amount of money damage to your orator would be difficult, if not impossible; and that hence, the only adequate jurisdiction for the protection of your orator's property in such quotations is that of a court of chancery, and the only adequate remedy a writ of injunction issuing therefrom, permanently restraining the said defendant from using or distributing said quotations or receiving the same from either of said telegraph companies until he shall have made application and be further enjoined from receiving said quotations in any other way or from other person or corporation. And your orator further avers that the amount involved and matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000.00.

In tender consideration of which and forasmuch as your orator is remediless in the premises, at and by the strict rules of common law, and is relieved only in a court of equity where matters of this nature are properly cognizable and relievable, and to that end that the said Clarence P. Hunt may true, direct and complete answer make to this bill, but not under oath (answer under oath being hereby waived); and that a temporary injunction may immediately issue, and upon the final hearing hereof be made perpetual, restraining said Clarence P. Hunt, either acting in his or its own behalf, or as a member of any firm, or as an agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of each of said defendant, from receiving, using, selling or distributing, directly or indirectly, the quotations of your orator, or any of them, and from having, maintaining or permitting, any telegraph or other wire running into or through his, its or their office, over which said quotations are passing and from aiding, abetting or assisting, directly or indirectly, any person,

firm or corporation in receiving, using, selling or distributing said quotations, until it, he or they, or the person, firm or corporation for which they or any of them shall be acting, shall have first lawfully acquired the right to receive said quotations either by contract or purchase from your orator, or, with your orator's consent and approval, from one of the telegraph companies authorized by your orator to distribute said quotations. And that your orator may have such other and further relief in the premises as will fully protect your orator's property right in said quotations, and as to your honors shall seem meet.

May it please your Honors to grant unto your orator a preliminary and permanent injunction against the said defendant as above prayed, and also a writ of subpoena of the United States directed to said Clarence P. Hunt commanding him on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this court.

NEW YORK COTTON EXCHANGE,
By HENRY CRAFT, *Its Counsel.*

HENRY W. TAFT,
HENRY S. ROBBINS,
Counsel for Complainant.

The appellant first filed a plea to the jurisdiction traversing that allegation of the bill wherein the jurisdictional amount was averred. After a replication to the plea and proof the court sustained the jurisdiction. Then the appellant filed an answer putting in issue the material allegations of the bill of complaint. So much of the answer as is deemed material to be set forth is as follows:

For all the said reasons, and also for the reasons stated above, making void and illegal the contract of the 14th July, 1903, set out in the bill, this defendant says and states and shows that the plaintiff had no right to prescribe the said form of application, and no right to require the making of any such application, and no right to refuse or to require the Gold & Stock Telegraph Co., or the Western Union Telegraph Co., to refuse the persons applying and willing to pay therefor the quotations afore-

said, because such persons refused to make such application. Whether or not, since shortly after the making of the contract of the 14th July, 1903, set out in the bill, every person receiving the quotations of prices from the plaintiff's cotton exchange through telegraph, except those persons before then receiving from the Western Union Telegraph Co., who have procured injunctions against that company preventing it withholding or withdrawing the quotations from them have executed and delivered applications similar in form to the form stated in the bill—this defendant does not know and cannot admit. He, therefore, denies the statement and calls for strict proof.

It is true that this defendant has not made any application to the plaintiff, or the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, similar to the form copied in the bill, but he has always been desirous, and even anxious to purchase and pay for and to have the use and benefit of the said quotations. And he has been and is now willing to comply with and conform to any and all reasonable rules and regulations by whomsoever prescribed, in order to obtain such quotations —but the rules and regulations the plaintiff has attempted to impose, as stated in the bill, for the reasons stated in this answer, are not reasonable, but are unjust, oppressive and illegal.

This defendant commenced business in Memphis as broker, dealing in cotton, stocks, grain and provisions about the month of March, 1899, and he made application to the Western Union Telegraph Co., under its designation of the Gold & Stock Telegraph Company, for its cotton quotations by "ticker," and such application was accepted by the said company upon the agreement of this defendant to pay therefor to it $25.00 per month for the said service.

The contract entered into was in writing, and a true copy thereof is filed with and as a part of this answer and marked Exhibit "A." The original is held subject to the order of the court for the purposes of this suit.

This defendant has continued business as broker, receiving the quotations contracted for under the said contract from its date until the present time. He has in all particulars complied with the condition of the said contract, and the said contract has always remained in force,

and he has paid the Western Union Telegraph Company, or the Gold & Stock Telegraph Company, the sum of $25.00 for each month's service as contracted for in the said contract. He has built up and has now a considerable business, at great expense and labor, and by the investment of considerable sums of money and the value and profits of his business depend largely upon the receipt and use of the said quotations by and through the said "ticker," under and in accordance with the said contract. To revoke or cancel the said contract and deny this defendant the benefit thereof, and the use of the cotton quotations by and through the ticker, as agreed therein, would in effect destroy his business as a business of profit and value, and would produce and cause him irreparable injury and damage.

This information or quotations is received by or through the "ticker" automatically—a specimen of which is made a part of this answer and marked Exhibit "B."

These letters and figures are at once put upon a blackboard in the office of this defendant for reference and use, and are used immediately in his office for the transaction of his business. The letters and figures upon the said exhibit indicate New York as the place from which the quotations are sent, the time of the sending, the month the cotton has been sold for.

The number of cents per pound the cotton is sold for is not stated, but it is assumed to be known, both in New York and at the point of receipt of the quotations, and only the hundredths of a cent constituting part of the price are put down in figures, thus:

N. Y. means New York; 1139 means the hour and minute of sending.

M. H. means March cotton; 67 means eleven and sixty-seven hundredths of a cent per pound.

This defendant has transacted no business, except that of broker, as stated above, for which he has been and is duly licensed under the laws of the State of Tennessee. Every transaction made by him has been evidenced by a report made by him to his customers, upon a form—a copy of which is filed herewith as a part of this answer and marked Exhibit "C." Such report evidences the consummation of the contract.

In every instance such contract, as appears by Exhibit "C" has had upon it, as appears upon said exhibit, the following:

"All orders for the purchase or sale of any article, are received and executed with the distinct understanding that *actual delivery* is contemplated where order is executed, and that the party giving the order so understands and agrees."

At some time shortly after July 14th, 1903, this defendant was informed that the plaintiff had required and proposed to compel the Gold & Stock Telegraph Company, or the Western Union Telegraph Company to revoke and cancel the contract between it and this defendant (Exhibit "A" to this answer), and to take the ticker out of the office of the defendant, and to withdraw and cease furnishing him the quotations contracted for in the said contract. Such action would practically have destroyed the profitable part of the business of this defendant.

Thereupon this defendant and other persons similarly engaged in the business of broker on July 31st, 1903, filed in the Chancery Court of Shelby County, Tennessee, their bill against the Western Union Telegraph Company, the only corporation or person, other than these defendants, within the jurisdiction of the State of Tennessee, a party to or connected with the contract aforesaid (Exhibit "A" hereto), or representing the Gold & Stock Telegraph Company, the other party to such contract.

The said suit stands as No. 12,613 in the Chancery Court of Shelby County, and to the record and proceedings in the same this defendant here refers as a part of this his answer. In the bill the facts on which the plaintiffs in the said suit, including this defendant, based their rights, as stated in this answer, were substantially set out, as more fully appears by the bill now here referred to for particularity and certainty. The prayer of the bill was that the plaintiffs in that suit, which included this defendant, severally have a writ of injunction restraining the Western Union Telegraph Company—the defendant to the said suit—from removing from the places of business of the plaintiffs in the said suit, respectively, just so long as they respectfully paid the price therefor the "tickers" then in their respective places of business and commanding and requiring the said Western Union Telegraph Company, the defendant, to afford this defendant and the

other plaintiff in the said suit, respectively, through the means of the ticker aforesaid, so in their places of business respectively, quotations, just as long as the said Western Union Telegraph Company, the defendant, furnished such quotations by such means to any other persons in the city of Memphis, engaged in the same business with this defendant and the other plaintiff, whilst they complied with its reasonable regulations and paid for such service. Upon the presentation of the said bill to the chancellor of the said Chancery Court of Shelby County an order was made requiring the clerk and master of the said court, upon the executing of the bond prescribed, to issue an order in the language of the prayer of the bill, restraining and prohibiting the defendant, the Western Union Telegraph Company, as prayed therein, until the further order of the court. Leave was granted the defendant in the said suit, upon a day's notice, to move to discharge the said stop order, but until the further action of the court it was declared that the order should be retained. It was dated July 31st, 1903. The bond required was executed and filed and approved. The language of the writ of injunction issued by the Clerk and Master of the said Chancery Court under the said order of the chancellor was that the defendant, the Western Union Telegraph Company, desist and refrain from removing from the place of business the plaintiffs in the said suit respectively, just so long as they paid the premium therefor, the "ticker" then in their respective offices, and that the said Western Union Telegraph Company afford said plaintiffs in the said suit respectively, through means of such "ticker" quotations, just as long as they furnished such quotations by such means to other persons in Memphis engaged in the same business with said plaintiffs, respectively, whilst they complied with the reasonable regulations and paid for such service.

On April 28th, 1904, the Western Union Telegraph Company, the defendant in said suit, filed its answer therein. It made the contract between the plaintiff in this suit and the Gold & Stock Telegraph Company, of the 14th July, 1903, copied in the bill herein, an exhibit to such answer, and based its defense to the said suit, so in the Chancery Court of Shelby County, substantially upon such contract. This defendant, upon the authority of such contract of July 14th, 1903, and from information

and belief, state and aver that the said answer was so filed by the Western Union Telegraph Company, at the request and by the direction and for the benefit of the plaintiff in this suit, the New York Cotton Exchange and also for the Gold & Stock Telegraph Company, and with the view and for the purpose of asserting and setting up for him, and in his belief, the very same matters and grounds and causes of action as are set up and relied upon in this suit.

After the said answer had been filed the said cause came on to be heard in the Chancery Court of Shelby County on August 12th, 1904. It was then decreed that the stop order aforesaid or injunction be discharged, and that the bill of the plaintiff in the said suit be dismissed at their costs. The plaintiffs in the said suit, including this defendant, prayed an appeal from that decree to the Supreme Court to sit at Jackson on the first Monday of April, 1905, and such appeal was granted and perfected, and the said cause taken thereby to the said Supreme Court.

The same was heard in the Supreme Court on the 15th June, 1905. That court decreed that the decree of the Chancery Court of Shelby County dissolving the injunction and dismissing the bill of the plaintiffs in the said suit, including this defendant, in the then condition of the record, as appears from a written memorandum made by the chief justice of the Supreme Court for the court, which memorandum was made a part of the decree of the Supreme Court and also of the *procedendo* issued from that court to the Chancery Court was erroneous and was reversed, vacated and set aside, and that the said suit be remanded to the Chancery Court for further proceedings, which the decree declared should consist of the taking of proof, if desired, and the final hearing of the said cause on its merits in the said Chancery Court.

The said Supreme Court further decreed that pending and until the final hearing of the said suit upon the merits, the injunction and stop order as granted by the Chancery Court as before stated, be retained and continued in force.

In the memorandum or opinion made by the chief justice, and forming a part of the decree of the Supreme Court, it was stated, among other things: "The answer presented as a defense to the claim of complainants' con-

tracts with the various exchanges of the country which, if made, raised a serious question for the consideration of the court. We think that in the absence of such contracts it cannot be maintained that the defendant company could remove the tickers of these complainants as long as they complied with the reasonable regulations of the defendant and declined to furnish them with further quotations, which were indispensable to the successful conduct of their business, and at the same time supply these instruments, and through them this valuable information to competitors in business in the same community. That the Telegraph Company is a quasi public corporation, bound to serve the public without discrimination, and have reasonable charges, is established by all the authorities, and especially in this State in the case of Marr vs. The Western Union Telegraph Co., 85 Tenn. 356. This being so, we think its only answer to the claim of the complainants lies in the contracts which it avers. Upon this averment, two questions arise. One of fact—the other of law.

The first is—have such contracts been made, and if so, what is their import? This can only be answered by competent evidence. This is not furnished by the specimen copy of one of these contracts made an exhibit to this answer. We think that in the absence of competent evidence as to the making and stipulation of these contracts the court should not rule upon them.

The next question is one of law. Conceding their existence and their nature as averred, do they furnish a sufficient answer to the demand of the complainants? As to this question the courts are divided. In the present condition of the record it is impossible for this court to decide the question."

And the court said further in the same memorandum: "In view of this difference of judicial opinion, we think it will be improper in the face of a record imperfect as this is, to intimate an opinion on this question. It will be time enough to do this when it is presented upon a record bringing up in perfect condition one or all these contracts. As to the dissolution of the injunction, we think as the injunction was the very life of this bill, having been granted, it should not have been dissolved until the cause was finally heard."

After the decree of the Supreme Court, the *procedendo*

from that court was sent down to the Chancery Court of Shelby County, and filed therein and the decree of the Supreme Court, including the said *procedendo,* was made a part of a decree of the Chancery Court, and the said suit is now pending in the said Chancery Court, awaiting the taking of testimony as directed by the Supreme Court, and in the meantime the injunction granted as before stated remains in full force and effect.

This defendant has remained in the use and enjoyment of the ticker, placed in his place of business, as aforesaid, by the Western Union Telegraph Company, under and by virtue of the contract of about May 1st, 1899, and the injunction so granted and issued by the Chancery Court of Shelby County and the Supreme Court of Tennessee, as they still are, and in that way and by that means he has been and is receiving and the Western Union Telegraph Company has been and is furnishing him the continuous quotations described in the bill and in this answer.

This defendant states and shows that the said suit, so pending in the Chancery Court of Shelby County, embraces and comprehends the same subject matter as this present suit, that it is between the same parties, plaintiffs and defendants as this present suit; that the same questions of fact and law are involved and to be decided as in this suit, and that the decree to be pronounced will adjudicate and dispose of the same matters of controversy that are sought to be adjudicated and disposed of in this suit.

This defendant, therefore, pleads and relies upon the pendency of the said suit in the Chancery Court of Shelby County, Tennessee, in bar of the further prosecution of this suit, and prays that he may have the benefit of this plea as a matter of defense by way of answer.

This defendant further claims and insists and states and shows that this court has not the jurisdiction to grant or issue the injunction herein prayed for, because of the injunction aforesaid granted, and in force in the said suit pending in the Chancery Court of Shelby County, Tennessee, as the injunction herein prayed for would require and compel the violation and breach of the injunction granted and in force in the Chancery Court of Shelby County, and the undoing of what has been done and is to be done in the course of the said suit.

This defendant states and shows further, that at no time has he wrongfully or illegally obtained or acquired

or had the use of the quotations claimed by the plaintiff to belong to it, as appears by its bill, nor has he done or permitted anything contrary to the provisions and meaning of the contract, entered into between him and the Western Union Telegraph Company of about May 1st, 1899.

For a further defense, this defendant states and shows that the Western Union Telegraph Company and the Gold Stock Telegraph Company, with the consent and by the permission and under the authority of the plaintiff in this suit, has been since the 14th July, 1903, and still is selling, delivering and furnishing to a number of brokers in the city of Memphis, doing substantially the same business as this defendant, the continuous quotations aforesaid of the plaintiff, sent from its cotton exchange in New York City, in the manner before stated, without limit or restraint or condition, and by means of "ticker" in his respective place of business, upon terms substantially the same as those set out in the contract between this defendant and the Gold & Stock Telegraph Company of ——.

And this defendant submits and states and shows that the plaintiff cannot lawfully withhold and refuse such quotations to this defendant upon the same terms upon which he has been and is being received by the said other brokers. And he submits further that the withholding and refusal of the plaintiff of such quotations to this defendant is wrongful and in violation of law. All the allegations and statements of the bill to the contrary are now here denied.

Further answering this defendant says and states and shows that upon the facts alleged in the bill, the remedy of the plaintiff against him for the alleged causes of action, set out in the bill, is complete and adequate at law, and that this court has no jurisdiction on the grounds set out in the bill, or any other grounds to maintain this suit.

And for further defense this defendant states and shows that many years prior to 1903, in order to obtain revenue from its quotations and information, the complainant inaugurated the arrangement with the said telegraph companies, by which said telegraph companies were to pay it for said quotations and information and dispense and sell the same throughout the country. And defendant shows further that this was done for the express purpose

of building up the kind of business in which defendant is engaged. The complainant and the telegraph companies say and understand that if this kind of business could be built up, the persons engaged therein would need the quotations and information which the said complainant and the telegraph companies could, under said agreement, furnish them. It was a part of said arrangement that all persons who might engage in said line of business should be assured they could at all times receive said quotations and information for a reasonable compensation. The plan thus inaugurated proved successful. This defendant and other people throughout the country, on the faith and assurance that said arrangement would be faithfully and continuously carried out by the complainant and said telegraph companies, entered into said business, and have now large sums of money invested therein. And this defendant now avers upon these facts that the complainant is estopped from arbitrarily denying him the use in his said business of said quotations and information. CLARENCE P. HUNT.

Proof was taken, agreements of counsel entered into. The trial judge sustained the bill of complaint, and granted the relief prayed for (Tr. p. 88) upon the authority of the Board of Trade v. Christie Grain & Stock Co., 198 U. S. 236 *et seq.*

The appellant submits that this case is to be differentiated from the above cited case, and assigns as errors:

I.

The court erred in adjudging and determining that the sum in controversy involved the sum of $2,000.00, exclusive of interest and costs.

II.

The court erred in adjudging, upon the matters and things set forth by the plaintiff, it had jurisdiction to grant the injunction and pronounce the final decree appealed from. (Tr. p. 93.)

ARGUMENT.

I.

The case at bar is clearly a different case from the case of the Board of Trade v. The Christie Grain Co. The matter in controversy in the Christie case was not the subject of argument or pleading, so far as the record discloses. The trial judge affirmed in this case that the jurisdictional amount existed, because, in his opinion, the integrity of the contract between the appellee and the Telegraph Company was involved, and he held that the subject matter of the controversy was the value of that contract. (Tr. p. 72.)

The bill is a *quia timet* one, pure and simple. It is neither alleged nor proven that the contract between the appellee and the Telegraph Company was impaired, stopped, impeded or interfered with. The allegation is that such unauthorized receipt and use of said quotations by the appellant is calculated to, and in time will, if not entirely stopped, seriously impair the value to your orator, of its quotations. (Tr. p. 14.)

The proof established that the value of the contract between the appellee and the Telegraph Company is the amount in dollars and cents received and paid, and from the hour of entering into the contract up to the date of the testimony of Mr. King, the manager of the exchange, the exchange had received the price agreed to be paid for the information gathered on the floor of the New York Cotton Exchange.

So the question is, is the subject matter of this litigation, that fear and apprehension that unless the appellant is restrained, the value of the contract between the appellee and the Telegraph Company will be depreciated? Thus far its

value has not been affected. The price is stipulated for, it receives, and the appellant has paid the Telegraph Company for quotations which he receives from it.

This bill is not framed on the theory that the quotations are received surreptitiously, or by theft, but is founded upon the theory that the quotations which were being received under contractual relations between the appellant and the Telegraph Company, and protected by the injunctive process of the State court, may be dealt with in the Federal court, because their receipt and use is calculated to, and in time will, if not entirely stopped, seriously impair the value of the quotations to the appellee.

The contract between the appellee and the Telegraph Company provides as follows:

> The Telegraph Company, however, shall not be required to remove any of its tickers or wires or to discontinue service furnished by any other means, which are under restraint by injunction of the courts during the pendency of such injunction. * * *
>
> In cases brought against the Telegraph Company the exchange may defend by its own counsel at its own expense in the name of the Telegraph Company.
>
> In cases where an application has not been approved by the exchange, and the legal proceedings shall be thereupon commenced against the Telgraph Company on account of its refusal to furnish said quotations, the Telegraph Company shall, at its own cost and expense, defend such litigation, and shall use diligent efforts to secure the removal of any injunction obtained in said causes, in cases in which the exchange may so desire or request. (Tr. p. 8.)

And the compensation provided for the privilege of receiving and selling said quotations, necessarily embraces the right to sell such quotations to persons who occupy the relation of the appellant to the Telegraph Company, protected by the injunctive process of a court of competent jurisdiction.

The question, therefore, is not an analogous one to the cases that hold for jurisdictional purposes, the amount involved is the value of the complainant's right to conduct its business without being subject to the burden of a nuisance, an illegal tax, or a threatened appropriation of property under an unconstitutional act, of the value of $2,000.00, exclusive of interest and costs.

In Scott v. Donnell, 165 U. S. 107, it appeared by the agreed statement of facts that previous to the filing of the bill and temporary injunction granted in that cause, the State constable seized and threatened to seize in future all intoxicating liquor whatsoever, coming into the State from other States and foreign countries, and to carry out in full all the provisions of the dispensary law of January 2, 1895, and that the value of the right to import ale, wines and other liquors, products of other States and countries, is of the value of $2,000.00 and upward, and the difference in the price to the consumer like the plaintiff, of such liquor bought at the State dispensary of South Carolina, and bought out of the State, is about 50 or 75 per cent. in favor of imported liquors, and this court, speaking by Mr. Justice Shiras, said:

> Such statement sufficiently concedes the pecuniary value of the plaintiff's rights in controversy, exceeds the value of $2,000.00, nor can it be reasonably claimed that the plaintiff must postpone his application to the Circuit Court, as a court of equity, until his property to an amount exceeding in value $2,000.00 has been actually seized and confiscated, and when the preventive remedy by injunction would be of no avail. Ibid. 114-115.

In the case of the Railroad v. Ward, 2 Black. 485, this court held in a suit to abate a railroad bridge as a nuisance, the value of the right to maintain the bridge, and not the amount of complainant's damages, determines jurisdiction on appeal. (Page 492.)

The mere allegation in the bill of complaint that the amount involved in matters in dispute, exclusive of interest and costs, is much more than the sum of $2,000.00, did not confer jurisdiction on the Circuit Court.

North American, etc., Ins. Co. v. Morrison, 178 U. S. 262-267.

In the case at bar there is no question as to the damage, proximate or remote. The appellee gets all it contracted to get under its contract with the Telegraph Company. There is no pretense that during the life of that contract, from its inception up to the trial of the case in the court below, its value was impaired or affected prejudicially. The jurisdiction was sustained upon testimony of experts, one of whom was a member of the New York Cotton Exchange, and the other a member of the Chicago Board of Trade. The former, on his direct examination, in answer to the following question:

"What would be the right referred to in the last question? What would be its value approximately, in your opinion, to the members of the New York Cotton Exchange, the right to control quotations in the way it is now done?" said: "I would say a large amount."

"Would it exceed $2,000.00?" A. "Very much."

It is to be noted that Mr. King, the witness, and the superintendent of the New York Cotton Exchange, nowhere in his testimony states that the matter in controversy between the appellant and the appellee is or exceeds $2,000.00. He does say that the value to the New York Cotton Exchange to confine its quotations to such persons as shall sign the application, set out in the bill of complaint, etc., would make a difference of fully one million dollars a year, but he qualifies and explains this answer in reply to the following question:

"You think that is the value of that right?"

"A. No. What I mean is that that amount of business is diverted from the exchange."

And then follows the two questions and answers above quoted. (Tr. p. 85.)

But this witness leaves nothing to uncertainty, and he is by far the best qualified man to speak on the subject, for in answer to the following question, on cross-examination, "What do you say was the value of this contract independent of the business diverted from the New York Cotton Exchange?" he says: "The value in dollars and cents was the amount the exchange receives from the Western Union Telegraph Company." (Tr. p. 87.)

The member of the Chicago Board of Trade who testifies as a witness, says he can only estimate or approximate the value of the right, for the reason that the volume of speculative business in the country changes, and changes the value of the right. If there is a large volume of speculative business in cotton, the value to the New York Cotton Exchange would probably amount to a million dollars, while a depressed market, it would not amount to more than two hundred thousand or three hundred thousand dollars a year.

Manifestly, the object sought to be accomplished by the bill in this case is stopping the receipt by the appellant of continuous cotton quotations which he is receiving by virtue of the injunctive process in a suit instituted by him against the Western Union Telegraph Company, and now pending in the Chancery Court of Shelby County, Tennessee, and necessarily the amount in controversy is determinable by the value to the appellee of the accomplishment of that object.

McNeill v. Ry. Co., 202 U. S. 543-558.

McDaniel v. Traylor, 196 U. S. 415-422.

In the last cited case this court, by Mr. Justice Harlan, held that the value of the joint interest of the plaintiffs in the lands

in question was the matter in dispute, and consequently sustained the jurisdiction of the Circuit Court. (Page 422.)

But here, the value of the contract between the appellee and the Telegraph Company is not the matter of dispute, and neither is the right to control the disseminating of the markets gathered upon the floor of the Cotton Exchange, by the appellee, the matter in dispute. The matter in dispute is a narrow one. It is the right to prevent the appellant from receiving the continuous quotations from the Telegraph Company, which he pays for, pending a litigation in the State courts. And, consequently, a wholly different object from the right to prevent the getting at the knowledge of a trade secret, or of quotations of the market surreptitiously, and using the knowledge so obtained. That was the matter in controversy in the Board of Trade v. Christie Grain & Stock Co., *supra,* and in the several cases cited by Mr. Justice Holmes, on page 251.

Here, there is no violation of a duty or trust. The market quotations are not received surreptitiously. The appellant is not depriving the appellee of the protection of the law. The appellee receives the price for its quotations, the Telegraph Company receives its monthly price from the appellant, precisely the same sum it sells those quotations to twenty other persons and firms in the City of Memphis. Indeed, the appellant does not share with the appellee its property right in its quotations. It pays for them, and obtains them by virtue of the injunctive process of the Court of Chancery, which is provided for by the terms of the contract between the appellee and the Telegraph Company.

Prior to the 31st of July, 1903, the Telegraph Company collected these quotations on the floor of the exchange, transmitted them to customers, one of whom was the appellant. After the 31st of July, the appellee itself collected these quo-

tations, and delivered them to the telegraph companies, to be transmitted to their customers, and among other things provided the Telegraph Company to have the right to serve the quotations to members of the exchange at their offices or branch offices, and to all persons, firms, corporations or organizations in New York and elsewhere, whenever the Telegraph Company may desire to serve them; but not to persons, firms or corporations who or which may be directly or indirectly in the promotion or maintenance of bucket shops.

The limitation placed upon the right to receive these continuous cotton quotations is set forth in the form of application required to be made, and it was because the appellant would not sign that application that the controversy arose. There is no doubt but that reasonable contracts limiting the right of communicating the cotton quotations are valid, for it has been held repeatedly that a limited publication does not entitle the public to acquire the right of use.

In the Board of Trade v. the Christie Grain & Stock Co., *supra,* this court, speaking by Mr. Justice Holmes, said:

> Time is of the essence in matters like this, and it fairly may be said, if the contracts with the plaintiffs are clear, the information will not become public property until the plaintiff has gained its reward.
> 198 U. S. 251.

In the case of the Board of Trade v. Cella Commission Co., 145 Fed. 28, the Circuit Court of Appeals for the Eighth Circuit reversed the decree of the court below and affirmed that the amount of value involved in that suit was the value of the right that the complainant sought to protect from invasion, or the object to be gained by the bill.

It is to be observed that in that suit the contract between the Chicago Board of Trade and the Telegraph Company obligated the former to use all reasonable endeavors to pro-

tect its property right in the quotations against the purloiners thereof, and the Circuit Court of Appeals adjudged *inter alia* that the subject matter of the controversy involved the jurisdictional amount required.

In the case at bar, there is no such provision in the contract with the telegraph companies, for the telegraph companies are not required to remove any of their tickers or wires or discontinue service furnished by any other means which are under restraint by injunction of the courts, during the pendency of such injunction. Indeed, the Telegraph Company is to defend these suits at its own expense, and use diligent efforts to secure the removal of any injunctions obtained in cases in which the exchange may so desire or request. The whole tenor of the contract is to put the burden upon the Telegraph Company of a suit against it or by it for the prevention or stoppage of competitive use.

In the case at bar there is no competitive use. The Telegraph Company gets the price it exacts, and the appellee gets the consideration for the use of the information sold by it the telegraph companies.

We therefore respectfully submit that there is no evidence tending to establish that the matter in dispute between the parties to this suit amounts to $2,000.00, exclusive of interest and costs, and the learned trial judge committed an error in so holding.

II.

The second assignment of error involves the determination of the question of whether, upon the facts and circumstances of this case, the Circuit Court of the United States, in equity, had jurisdiction to grant the injunction herein.

In order to present this question fully to the court, it is necessary to state the attending circumstances, together with the precise issue involved in the record.

The appellant is a member of the Memphis Cotton Exchange, and engaged as a broker in the City of Memphis since 1899, and has been in contractual relations with the Western Union Telegraph Company since that time, using a ticker, which works automatically and registers continuously the market quotations, which are transcribed on a blackboard, open to the public, as rapidly as they appear upon the tape of the register. (Tr. p. 74.) The appellant is prepared to deliver all the cotton or other commodity which he sells, and to pay for all that he purchases, and every contract which he makes has a stipulation to the effect that actual delivery is contemplated and understood. (Tr. p. 77.)

In August of 1903 the appellee began furnishing to the telegraph companies market reports for sale, and provided a form of application to be used, and made that a condition precedent to the right of the Telegraph Company to furnish these market reports, and thus arose the controversy between the Telegraph Company and the appellee upon the one side, and the appellant upon the other.

The appellant insisted that the limitation upon the former customers of the Telegraph Company was an unreasonable one, and filed his bill in the Chancery Court, and therein obtained a mandatory writ of injunction.

The mere placing upon a blackboard in the city of Memphis of the market reports operates to make them public property, and they cease to be of further pecuniary value. Some of these market reports are upon the blackboard of Ganong & Fitzgerald about five minutes before the appellant receives his, and his are placed upon a blackboard in his office, in about a minute after they are registered upon the ticker.

In the Board of Trade v. Christie Grain & Stock Co., *supra*, page 250, it is observed:

> The plaintiff does not lose its rights by communicating the result to persons, even if many, in confidential relations to itself, under a contract not to make public, and strangers to the trust will be restrained from getting at the knowledge by inducing a breach of trust, and using knowledge obtained by such a breach.

In the case at bar the appellant is not a stranger to the trust, and therefore is not to be restrained, because he does not get at the knowledge which he requires by inducing a breach of trust, nor is he using the knowledge obtained by such a breach. He gets at that knowledge by paying for it, as others pay for it, and by having it furnished to him under the operation of a mandatory writ, and the only trouble in this case is that the appellant has not signed the application required to be signed, as a condition precedent, in order to obtain the market quotations from the Telegraph Company.

The transactions on the Chicago Board of Trade and the New York Cotton Exchange and the New York Stock Exchange are legal transactions, and enforcible, and the record discloses that so far as the appellant is concerned every transaction which he makes is a legal transaction, within the cases adjudged by this court.

> Clews v. Jamison, 182 U. S. 461, and the authorities cited by Mr. Justice Peckham on pages 489, 490, 491.

The law of Tennessee, however, is peculiar, in that it provides that the intention of one of the parties to a contract for the sale of stock, bonds, cotton or other commodity for future delivery, not to perform the contract by actual delivery, or by the acceptance of actual delivery, makes the contract a wagering contract, and consequently it is out of all reason to require an applicant for continuous quotations to agree that every contract respecting the purchase or sale, or the purchase and sale of any cotton, shall be that contract wherein both parties shall contemplate actual performance, or that

he shall contemplate actual performance, and the further agreement that he will not use, nor allow any one else to use, such quotations, or any of them, where a wagering contract is contemplated, or in a bucket shop. That is certainly an unreasonable provision, because these quotations are furnished for public use, and when transcribed upon the tape of the ticker, open to the public automatically, or therefrom transcribed upon a blackboard, the person who has purchased the use of them has no power whatever over the use other persons may make of them.

Whether this case be viewed as a case analogous to a trade secret, or the use of valuable information gathered by others, upon the facts disclosed by the record, the court was without jurisdiction to grant the final decree enjoining the appellant.

High on Injunction, Sec. 19 and authorities cited in the note to the 4th Ed. on page 27.

It is only where equity fastens an obligation upon the conscience of a party not to use or divulge his knowledge that it has jurisdiction to enforce the obligation by injunction, and that evidently is the limitation in the case of the Board of Trade v. the Christie Company.

Here there is no obligation fastened upon the conscience of the appellant, but the enforcement of a legal right, and then recurs the question, has the Federal Court, in equity, jurisdiction to enjoin him from receiving the benefit of an injunction sued out in a State court by him, and under which alone he obtains the use of the ticker that registers the market quotations of the New York Cotton Exchange? In short, the Federal Court has practically enjoined the operation of the judgment and decree of the State court.

The only question upon this branch of the case is whether it comes within the provision of the Revised Statutes, Section 720, which is to the effect that no writ of injunction shall be

granted by a court of the United States to stay proceedings of any court except in matters of bankruptcy. It cannot be successfully answered that this is not a proceeding wherein the injunction does stay, and was sued out for the purpose of staying the proceedings in the State court, because the appellant cannot have the benefit of the judgment of the State court without being in contempt of the Federal court, for that decree enjoins him, his agents, employes and servants from using, selling or distributing, directly or indirectly, the quotations of the complainant, or any of them, and from having, maintaining or permitting any telegraph or other wire run into or through his office on which said quotations are passing, etc., which is simply enjoining him from having the benefit of the injunction granted by the State court, wherein the Western Union Telegraph Company was restrained from removing from his place of business the ticker therein, and required to furnish to him, by means of the ticker, the quotations just as long as it furnished them to other persons in the city of Memphis engaged in similar business, and he complied with its reasonable regulations, and paid therefor. (Tr. pp. 89-31.) The form of the decree is immaterial. Its substance is the matter for consideration.

It was open to the appellee to direct the conduct of the suit in the State court, and that suit could have been, at the proper time, if the matter in controversy here amounts to $2,000.00, exclusive of interest and costs, removed to the Federal Court, and therein determined, for in that suit the Western Union Telegraph Company was to all intents and purposes the representative of the New York Cotton Exchange.

In the U. S. v. Parkhurst-Davis Mercantile Co., 176 U. S. 317, this court held in an opinion by Mr. Justice Brewer that it was within the provisions of Section 720 of the Revised Statutes.

In that case it was sought to restrain the defendants from enforcing in the courts of the State of Kansas certain claims against two persons, members of the Prairie band of the Pottawatomie Indians, residing on a reserve within the limits of Kansas, and Mr. Justice Brewer, speaking for this court, said:

> Upon these admissions and facts, the case comes clearly within the provisions of Section 720 of the Revised Statutes, to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings in any court of a State, excepting in matters of bankruptcy. Citing:
> Peck v. Jenness, 7 How. 612-625.
> Watson v. Jones, 13 Wallace 679-719.
> Haynes v. Carpenter, 91 U. S. 254-257.

In Watson v. Jones, *supra,* this court, in an opinion by Mr. Justice Miller, held that an unexecuted order made in an appellate court, to be enforced by a court of primary jurisdiction, cannot be interfered with by any other court by way of injunction, especially by a court of the United States, by reason of the Act of Congress of March 2, 1793. (Pages 719-720.)

This provision of the Act of Congress seems to have been first construed and applied in Diggs v. Woolford, 4 Cranch 179. In that case a decree of the Circuit Court had enjoined the defendant from proceeding in a suit pending in a State Court, and this court reversed the decree, because it had no jurisdiction to enjoin proceedings in a State court. It was followed in Peck v. Jenness, *supra,* in an opinion of this court, delivered by Mr. Justice Grier.

In the case of Dyall v. Reynolds, 96 U. S. 340, this court, speaking by Mr. Justice Swayne, said:

> The gravamen of what is desired as to Reynolds is an injunction to prevent his proceeding at law in a State court. Without this all else is of no account. Any other remedy would be unavailing.

Here the gravamen of the bill is to prevent the appellant from receiving the benefit of the judicial decree of the State court, and it is practically a bill to enjoin his doing so, and is within the spirit of the Revised Statute, if not within its letter. (Sec. 720.)

In the Central, etc., Bank v. Stephens, 169 U. S. 463, this court held that a State court could not restrain parties from proceeding with a sale under a decree of the Circuit Court of the United States.

In that case Mr. Justice Shiras reviewed the authorities and approved the language of Mr. Justice Grier in Peck v. Jenness, *supra,* that "State courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either process or proceedings in the National courts. Circuit courts and State courts act separately and independently of each other, and in their respective spheres of action the processes issued by the one are as far beyond the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye." (Page 460.)

In the case at bar the appellant, under the peril of a contempt proceeding, is deprived of the benefit of the judgment of the State court, and the effect of the decree is to enjoin him from enforcing the decree of the State court. The decree operates upon him as effectively as though it in terms enjoined him from proceeding in the Chancery Court of the State, and is the exercise of a power over him as a litigant in the State court.

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